

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6/20/2018

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SEAN GREEN

Petitioner,

-against-

MICHAEL KIRKPATRICK

Respondent.
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17 Civ. 1997 (LGS)

ORDER

LORNA G. SCHOFIELD, District Judge:

WHEREAS, on June 29, 2009, the Supreme Court, New York County, after a jury trial, convicted Petitioner of one count of assault in the first degree and two counts of criminal possession of a weapon in the second degree, and sentenced him, as a persistent violent felony offender, to an aggregate term of 22 years to life;

WHEREAS, on September 29, 2015, the Supreme Court of New York, Appellate Division, First Department, unanimously affirmed the decision of the trial court. The court concluded that that the trial court's evidentiary ruling under the requirements of *People v. Sandoval*, 314 N.E.2d 413 (N.Y. 1974), did not deprive Petitioner of a fair trial pursuant to the due process rights under the Fourteenth Amendment of the United States Constitution;

WHEREAS, on April 5, 2016, the Court of Appeals of New York denied Petitioner's application for leave to appeal;

WHEREAS, on March 17, 2017, Petitioner filed his Habeas Corpus Petition, alleging that his due process rights under the Fourteenth Amendment were violated by the trial court's *Sandoval* evidentiary ruling. By order dated November 8, 2017, this matter was referred to

Magistrate Judge Robert W. Lehrburger;

WHEREAS, on March 6, 2018, Judge Lehrburger issued a Report and Recommendation on Petitioner's Habeas Corpus Petition, finding the Petition to have no merit and recommending the denial of relief;

WHEREAS, no timely objection was filed;

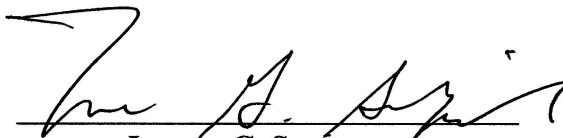
WHEREAS, "[i]n reviewing an R & R of a magistrate judge, a district judge 'may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.' 28 U.S.C. § 636(b)(1). A district judge is required to 'make a *de novo* determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made' by any party. Fed. R. Civ. P. 72(b). 'But, where no timely objection has been made, the 'district court need only satisfy itself that there is no clear error on the face of the record' to accept the R & R.'" *J & J Sports Prod., Inc. v. El Ojo Aqua Corp.*, No. 13 Civ. 6173, 2014 WL 4699704, at *1 (E.D.N.Y. Sept. 22, 2014) (quoting *Urena v. New York*, 160 F. Supp. 2d 606, 609–10 (S.D.N.Y. 2001)).

WHEREAS, the Court finds no clear error on the face of the record. It is hereby

ORDERED that the Report and Recommendation is adopted and the Petition for a writ of habeas corpus is DENIED.

The Clerk of Court is respectfully directed to close this case and mail a copy of this Order to pro se Petitioner.

Dated: June 20, 2018
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE